

**FEDERAL HIGHWAY ADMINISTRATION
AND
FEDERAL TRANSIT ADMINISTRATION
TEA-21 PLANNING AND ENVIRONMENTAL PROVISIONS:
OPTIONS FOR DISCUSSION**

Purpose of This Document

The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) are interested in your views on how the planning and environmental provisions of the Transportation Equity Act for the 21st Century (TEA-21) should be implemented. You may have participated in last year's extensive outreach effort on TEA-21 conducted by the U.S. Department of Transportation (U.S. DOT). In order to focus and continue discussion by partners and stakeholders, the FHWA and FTA have summarized input from the TEA-21 outreach program in this document "TEA-21 Planning and Environmental Provisions: Options for Discussion." This document presents issues and implementation options relative to the planning and environmental provisions of TEA-21. Due to the integral relationship between transportation planning and the process for implementing the National Environmental Policy Act (NEPA), FHWA and FTA are proceeding concurrently with the updating of the NEPA regulation (23 CFR Part 771) and the issuance of a revised joint planning regulation and associated guidance. FHWA and FTA intend to issue the NPRM addressing both planning and NEPA issues over the coming year.

We welcome your comments and views on any of all issues in this document. We would also be interested in your input on which issues should be addressed in regulation and which issues should be addressed in guidance or through informational materials or technical assistance. We recognize that the document is lengthy; however, this is necessitated by the scope of issues that will be addressed in the updates to guidance and/or regulation.

If you know of others who are interested in these issues, please let them know of the availability of the document on the FHWA/FTA web site at: <http://www.fhwa.dot.gov/environment/tea21imp.htm>.

Please provide your comments and suggestions by March 15, 1999 to either Sheldon Edner, Office of Metropolitan Planning and Programs-HEP-20, Federal Highway Administration; or Charles Goodman, Office of Planning Operations-TPL, Federal Transit Administration, both at 400 Seventh St., S.W., Washington, D.C. 20590. You may also fax comments to Mr. Edner at (202)366-7660 or Mr. Goodman at (202) 493-2478. For further information, you may reach Mr. Edner at (202)366-4066 between 8:00 a.m. and 4:30 p.m. Monday through Friday, or Mr. Goodman at (202)366-1944 between 7:30 a.m. and 5:00 p.m. Monday through Friday.

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TEA-21 Planning and Environmental Provisions: Options for Discussion

I. Introduction

The U.S DOT strategic goals recognize that transportation activities represent both opportunities and challenges regarding benefits and impacts. This has led to a stronger policy thrust within the U.S. DOT and its modal administrations toward decisions that reflect a much stronger sense of environmental responsibility. Concurrent with this policy direction, the U.S. DOT seeks to foster transportation decisions that are exemplary in all ways. FHWA and FTA view the changes in TEA-21 as opportunities to improve and integrate planning and environmental processes to support more effective decision making. It is in this context that the following options for discussion have been developed.

A. TEA-21 Outreach

The FHWA and FTA recently completed a six-month national outreach effort, in concert with the Office of the Secretary and other modal administrations within the U.S. DOT, to hear from the public and stakeholder groups how they would like to see TEA-21 and related revisions to the environmental process implemented. The input received through the outreach effort was extensive, has been synthesized into U.S. DOT's Outreach Summary Document: [Listening to America](#), and will be very helpful to FHWA and FTA in the implementation of TEA-21.

The FHWA and FTA are committed to developing guidance, regulations and informational materials to ensure early and full consideration of transportation impacts on local communities, cities, businesses, metropolitan areas and States. The FHWA and FTA will carry out this effort in a manner which provides their partners the needed flexibility to tailor transportation planning and decision making processes to State and local needs and goals.

As part of this effort the U.S. DOT will revise its National Environmental Policy Act (NEPA) implementation regulation (23 CFR Part 771, August 28, 1987) for the first time in more than a decade. This approach is designed to ensure consistency between the planning and environmental requirements and to provide timely information to stakeholders on the expectations of the U.S. DOT.

B. How this Document is Organized

While we are considering planning and environmental issues together, this document presents them in three parts: Planning Issues, Planning and Environmental Provisions: Cross-Cutting Issues, and National Environmental Policy Act (NEPA) Issues. It is intended to present summary information on key TEA-21 changes, provide a sense of the input received from stakeholder groups and individuals over the past six months, and to elicit input from our stakeholders on the implementation of the TEA-21 planning and environmental provisions.

II. Planning Issues

A. Scope of the Planning Process

1. Planning Factors

TEA-21 recognized that transportation investments impact the economy, environment, and community quality of life. TEA-21 included seven factors that replace the 16 metropolitan and 23 statewide planning factors to be considered in the metropolitan and statewide planning processes. In addition, TEA-21 specifically provides that failure to consider any of these factors in transportation plans, programs or projects shall not be reviewable in court. Specifically, TEA-21 metropolitan and statewide planning processes must consider transportation projects and strategies that will:

- a) support the economic vitality of the United States, the States and metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;
- b) increase the safety and security of the transportation system for motorized and nonmotorized users;
- c) increase the accessibility and mobility options available to people and freight;
- d) protect and enhance the environment, promote energy conservation, and improve quality of life;
- e) enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;
- f) promote efficient system management and operation; and
- g) emphasize the preservation of the existing transportation system.

Summary of Outreach Process Comments: During the outreach process, there was support for the consolidation of the planning factors and stakeholders asked for flexibility to decide how to address the factors. Several participants noted that a uniform approach to addressing the seven factors would be inappropriate given the different geographic settings, economic base, and current age and condition of the transportation system in different locales.

Alternative Approaches to Implementation: Under the existing metropolitan and statewide planning regulations, minimal amplifying language on the meaning and content of planning factors was provided to help MPOs and States in their application. The seven factors are very general and the decision on how to consider them rests with the MPOs and States. Thus, one approach would be to simply rely on the statutory language in TEA-21 with no additional regulatory explanation. An alternative would involve issuing guidance, informational materials, best practices illustrating alternative approaches and technical assistance to encourage planning practices that integrate consideration of these seven factors into the transportation planning and decision making process. Another option would be to include explicit language in a revised planning regulation that emphasizes the need to consider the seven factors and list specific criteria as to how this can best be accomplished.

2. System Operation and Management

Operation and management of the transportation system requires greater attention in planning processes. Capital investment, especially for new capacity but also for system preservation has dominated traditional

transportation planning analyses and decisions. Continuing fiscal constraint, growing sensitivity to environmental impacts of infrastructure and the need for prudent management of infrastructure all dictate a closer consideration of systems management and operational strategies as part of systems planning. As above, this could be accomplished through the development of regulations, guidance and/or technical assistance materials to assure that operations and management considerations are fully integrated into the planning process. Options for incorporating Operations and Management in the planning process could also include establishing committees of operators as task forces advising the MPO, or developing a strategy for coordinating and integrating system operations across modes and jurisdictions.

B. Financial Issues

TEA-21 retained the basic construct of financially constrained metropolitan plans and statewide and metropolitan transportation improvement programs (STIPs/TIPs). In addition, TEA-21 calls for States and MPOs to cooperatively develop estimates of revenues in metropolitan areas for the implementation of the long-range transportation plan and for States, MPOs, and transit agencies to cooperatively develop revenue estimates for TIPs. TEA-21 also allows for the inclusion of illustrative projects in financial plans for statewide and metropolitan long-range transportation plans and programs (STIP/TIP). Finally, TEA-21 requires an annual listing of federally-funded projects that have been obligated in the previous year in metropolitan areas to be made available for public review.

1. Cooperative Development of Revenue Forecasts

The development of financially constrained plans and programs is facilitated by adequate and timely information on future resource availability. TEA-21 clarifies the requirement for cooperative development by States, MPOs and transit agencies of estimated future levels of funding from local, State or Federal sources that may reasonably be expected to be available to metropolitan areas.

Summary of Outreach Process Comments: During the outreach process, some stakeholders called for the establishment of an agreed upon set of procedures within each State to address issues including: how estimated future revenues may be distributed within a State, decision rules for allocating funds, and development of internal and external appeals processes to resolve disagreement among States, MPOs and transit agencies. They also suggested that language be developed, including methods to handle innovative financing strategies and specific methods to forecast the amount of future Federal funds MPOs can anticipate. Other stakeholders preferred broad flexibility in determining how revenue estimates will be developed and argued that the budgeting process and decisions on the distribution of Federal funds vary in each State and do not lend themselves to a federally-prescribed approach.

Alternative Approaches to Implementation: One option would be for States, MPOs and transit agencies to tailor approaches to meeting this requirement based upon State and local needs, with an appropriate phase-in period. Given different budgeting processes in each State and differences in how transportation revenues can be used, such an approach would provide discretion to States, MPOs and transit agencies. Another option would be to develop specific criteria and procedures for meeting this requirement and to include such language in the updated planning regulations.

2. Illustrative Projects

The long-range plan in metropolitan areas must include a financial plan that demonstrates how the plan can be implemented. The financial plan must include funds expected to be available from public and private sources and any additional financing strategies needed for the implementation of the plan's projects and programs. In addition, TIPs in States and MPOs must be fiscally constrained and include only those projects or an identified phase of a project, if full funding can reasonably be anticipated to be available for the project within the time frame anticipated for project completion.

TEA-21 allows States, MPOs or transit agencies to include illustrative projects in the financial plan and this provision could provide for accelerated implementation of such projects should new, unanticipated funds become available. Illustrative projects are potential projects only, and TEA-21 does not require that they be implemented if funding becomes available. The Act requires an action by the Secretary of U.S. DOT prior to selection of illustrative projects for advancement.

Summary of Outreach Process Comments: During the outreach process FHWA and FTA heard a great deal of support for permissive inclusion of illustrative projects in plans and programs. There were some concerns raised, however, about the need for coordination between States and MPOs in cases where illustrative projects are proposed to be added to metropolitan area plans or TIPs. Specifically, it was suggested that MPOs have explicit approval authority for the inclusion of such projects in metropolitan area plans and TIPs and for such proposals to ultimately advance. A number of other issues were raised such as whether illustrative projects should be considered in transportation conformity determinations and whether non federally-funded project development and other NEPA-related activities should proceed prior to approval of a project(s) in a plan or TIP.

Alternative Approaches to Implementation: One approach would involve treating illustrative projects outside the fiscal constraint of transportation plans and TIPs. This would mean that illustrative projects would have no legal standing with the Federal agencies relating to funding or transportation conformity and would not be included in financially constrained transportation plans or TIPs. Under this option, once such projects are added to the financially constrained plan and STIP/TIP through formal amendment, they would be treated like all other projects with respect to transportation conformity, project development, eligibility for Federal funds, and financial constraint requirements. Thus, it would still be the financially constrained plan and TIP that are subjected to the transportation air quality conformity determination and from which federally-funded projects are advanced. Under this scenario, if illustrative projects are proposed to be added to a long-range plan or TIP, approval by the Secretary of U.S. DOT of the STIP/TIP would be required and if the long-plan and TIP are in an air quality non-attainment or maintenance area, a new transportation conformity determination would be required.

In any options the agencies might consider, it is important that MPOs and States be mindful of the risks associated with advancing illustrative projects prior to the meeting all of the title 23 and 49 planning requirements and the conformity provisions contained in the CAA. Since the MPO's conformity determination must include regionally significant non-federal projects---as well as federal projects---advancing a State-funded illustrative project could jeopardize the MPOs conformity determination. NEPA-related project development activities would be conducted at the risk of the State and/or MPO,

since the projects would not be included in the financially constrained STIP/TIP and Federal funds could not be used to advance such projects. Questions need to be answered such as when an MPO would have to take formal action on such projects, and what the respective roles of States, MPOs and transit agencies would be in the selection of illustrative projects.

3. Annual Listing of Projects

TEA-21 requires that MPOs develop an annual listing of projects for which Federal funds were obligated in the previous year and to make such a listing available for public review. TEA-21 requires that the list be presented in a format consistent with the categories identified in the TIP. The purpose of this provision is to enhance public awareness of which projects are being implemented in metropolitan areas.

Summary of Outreach Comments: During the outreach process, some participants recommended that States also be required to make an annual listing of federally-funded projects available to the public. Other stakeholders requested that U.S. DOT encourage the States to assist the MPOs in assembling the required list for metropolitan areas pursuant to TEA-21.

Alternative Approaches to Implementation: One approach would be to provide discretion to MPOs to work with States and transit agencies to determine how best to assemble, disseminate and maintain this information. Another option would be to require that this list be developed through a public involvement process and in a user-friendly format, and that the list be made available through a range of media including, for example, the Internet. Ideas are invited and suggestions welcome for specific ways to develop, maintain, disseminate and format the required annual listing of projects.

C. Transportation Plan and Transportation Improvement Program (TIP)

TEA-21 requires that each State develop a process for ensuring coordination with local elected officials in non-metropolitan areas in the development of the transportation plan and TIP. It also reaffirms that long-range plans must be developed for a minimum of a 20-year forecast period. Further, clarifying language may be needed in revised planning guidance and/or regulations related to transportation plans/TIPs and transportation conformity.

1. Coordination with Local Elected Officials in Non-metropolitan areas

TEA-21 requires that States consult with local officials on the development of transportation plans and TIPs in non-metropolitan areas and calls for States to document their consultation processes within one year of enactment. In addition, the U.S. DOT must submit a report to Congress on the effectiveness of local elected official participation in transportation planning and programming and make recommendations for improvements based on the report.

Summary of Outreach Process Comments: During the outreach process it was suggested that where regional planning organizations or councils of government exist, they be considered as a possible institutional entity that States could work with to facilitate the engagement of elected officials. Others

argued that existing local official consultation arrangements are adequate and appropriate.

Alternative Approaches to Implementation: One option would be to allow State and local officials discretion to establish their own mechanisms for appropriate coordination and consultation. This would involve including only the statutory language in the updated rule while encouraging States to work through existing entities to facilitate the implementation of this provision. Another option would be to require the establishment of a formal forum for rural transportation planning similar to the MPO for urban planning. Either approach could be enforced as part of the required U.S. DOT “planning finding” made in conjunction with STIP approval.

2. 20-Year Forecast Period in Transportation Plans

Alternative Approaches to Implementation: One option would be to simply clarify, in accordance with TEA-21, that statewide and metropolitan long-range transportation plans must be developed for a minimum 20-year forecast period. Plans are updated every 5 years in air quality attainment areas and 3 years in nonattainment and maintenance areas. Transportation improvement programs (STIP/TIPs) in States and MPOs must be updated every two years; however, many States and MPOs update their STIP/TIPs more frequently. In some cases, this creates a situation where the Federal agencies are being asked to take action on STIP/TIPs that are based on plans that no longer cover a 20-year forecast period (e.g. a plan adopted in 1998 with a TIP amendment in 1999 would mean the plan associated with the TIP amendment would only cover a 19-year horizon, not 20-years). Another option would be to develop language that would indicate that this is acceptable provided the STIP/TIP update does not trigger a modification to the long-range plan (e.g. inclusion of a new regionally significant project).

Another option would be to provide clarification to the forecast period requirement specifically as it pertains to transportation conformity. A long-range plan could have less than a 20-year horizon if the update or the TIP amendment does not require a modification of the plan. If the TIP update or amendment proposes to add regionally significant projects which are not contained in the long-range plan for example, a plan modification as well as a conformity finding covering a full 20-year horizon period would be needed. Another option to address this issue would be to recommend that MPOs defer making significant changes to the plan/TIP until the next regularly scheduled three-year comprehensive plan update.

3. Transportation Conformity-Related Issues

There are several issues related to the transportation conformity requirements that could be addressed in the revised planning guidance and/or regulations. These issues relate to clarifying requirements and could lead to better integration of transportation and air quality planning, the principal objective of EPA’s transportation conformity rule.

Consistency between long-range plan update cycle and conformity determination: One approach would be to develop language explaining that the three-year time frame from which the transportation plan needs to be updated starts when the U.S. DOT (FHWA/FTA) completes its determination on the conformity of the plan. This clarification would help MPOs know when the three-year update is required

in order to facilitate their planning activities and to ensure that they meet the transportation conformity rule requirements.

Transportation Control Measures (TCMs) in SIPs: One option is to develop language clarifying that TCMs requiring Federal funding or approvals must come from a conforming, fiscally-constrained plan and TIP before those projects may be submitted to the EPA for inclusion as a SIP TCM. This language would help to ensure that TCMs meet the TEA-21 planning requirements and that they are included in plans and TIPs in metropolitan areas.

Use of locally-based count programs vs. HPMS to track VMT for transportation conformity purposes: One option would be to develop language allowing areas which substitute locally-based count programs for Highway Performance Monitoring Systems (HPMS) data as their primary measure of Vehicle Miles Traveled (VMT), to also use these locally-based counts for their historical base measure of VMT. This change would help to ensure that consistent data sets are used in VMT tracking for both the base year analysis and future year comparisons. Methods for areas to demonstrate that their local programs should replace HPMS as the historical base measure of VMT would have to be identified. One option would be to have MPO's demonstrate that local information is equal to or better than HPMS. Another approach might consist of simply requiring a period of 3 consecutive years of data to validate the base.

Definitions: TIP Amendments, Conformity Lapse, TIP extensions: In order to clarify ambiguous terms from ISTEA and EPA's transportation conformity rule, an option would be to add definitions to the planning regulation for: TIP Amendments, Conformity Lapse, and TIP extensions.

III. Planning and Environmental Provisions: Cross-Cutting Issues

This section discusses options to implementation of the cross-cutting planning and environmental provisions of TEA-21. Regulatory and non-regulatory approaches are presented that relate to planning, project development and environmental considerations affecting both the human and natural environment. Any option that might be advanced would be designed to ensure that the planning and environmental provisions of TEA-21 are coordinated and that the implementing guidance and regulations are consistent. Many of the concepts and issues discussed in this document will be coordinated with other administrations within the U.S. DOT and with other Federal agencies.

A. Public Involvement

TEA-21 continued the emphasis on public involvement, retained the provisions of ISTEA and added representatives of transit users and freight suppliers to the list of entities that must have an opportunity to comment on transportation plans and programs.

Summary of Outreach Process Comments: Some stakeholder groups indicated strong support for inclusion of these two groups of stakeholders in the transportation planning process. Others urged MPOs and States to include representatives of these stakeholders on policy boards or commissions and made the case that voting membership is important to advancing their interests in the transportation

planning and decision making processes.

State and local agencies indicated that they are considering ways to integrate the public involvement process related to plan and TIP development with the project development-related public involvement process. Several speakers noted the difficulties in getting public input on long-range plans and TIPs and the tendency for the public to be more inclined to participate in project-specific opportunities for input. They indicated that this tends to frustrate the public involvement efforts of State and MPO planners who are geared toward getting input on long-range transportation plans. Input in this area is needed as well as successful techniques and approaches to engage the public on both project-level proposals and long-range plans and TIPs.

Background on Public Involvement: Under the three regulations currently applying to public involvement in transportation planning and NEPA-related activities, the FHWA and FTA do not have a completely unified approach to involving the public. The regulations are found in the ISTEA planning regulations (23 CFR Part 450 October 28, 1993), the Environmental Impact and Related Procedures Final Rule (23 CFR and 49 CFR, August 28, 1987), which includes different procedures for FHWA and FTA (formerly Urban Mass Transportation Administration) projects, and the Council of Environmental Quality NEPA Regulations (40 CFR Parts 1500-1508). In addition, and in concert with policies relating to implementation of Title VI of the Civil Rights Act of 1964 and more recently the Environmental Justice Executive Order, the FHWA and FTA planning regulations specifically call for transportation agencies to actively seek out and consider the needs of those traditionally underserved by existing transportation systems, including but not limited to low- income and minority households.

The joint FHWA/FTA planning regulations discuss public involvement principles and performance expectations for transportation planning conducted by MPOs and State DOTs. The planning regulations provide the discretion to States and MPOs on how to carry out public involvement statewide and in metropolitan regions. However, all States and MPOs are required to develop explicit public involvement procedures and to make them available for public review prior to adoption. The FHWA/FTA do not approve the procedures but review them during planning certification.

The NEPA regulation, though jointly issued by FHWA/FTA in response to the Council on Environmental Quality regulations, provides different approaches to public involvement for FHWA and FTA projects. Each agency's approach reflects specific provisions in the respective highway and transit statutes. In short, FHWA requires each State to develop NEPA public involvement/public hearing procedures incorporating FHWA requirements and approved by FHWA. The procedures then apply to all FHWA-funded projects in that State, and individual projects have specific public involvement/public hearing programs developed under the procedures. The FTA has no corresponding requirement for agency-wide public involvement procedures. For FTA-funded projects, public participation is developed on a project-by-project basis to seek public input through scoping and public hearings. Additionally, both FHWA and FTA grantees are often subject to State and local public involvement requirements.

Alternative Approaches to Implementation - Option #1: A first option would be a consistent but flexible approach to public involvement for both the planning and NEPA process based on the approach currently found in the planning regulations with their public involvement principles and performance

expectations. States, MPOs and transit agencies would develop public involvement procedures tailored to local circumstances for transportation planning and project development. The public involvement procedures would be subject to public review and comment prior to adoption but not subject to approval by the FHWA/FTA.

Option #2: A second possible option would be a consistent approach to public involvement for both planning and the NEPA process based on the approach currently found in the FHWA NEPA regulations.

Option #3: A third approach might be to leave the planning public involvement approach as is and modify the NEPA regulations to make the two agencies' public involvement requirement consistent based on the FHWA approach. The result would be two flexible FHWA/FTA approaches to public involvement each tailored to local circumstances and each consistent between the two agencies.

Option #4: A fourth option might build upon one of the above and include provisions to improve public involvement for underserved populations by setting particular standards or performance expectations.

1) Would one consistent but flexible public involvement process help States and MPOs to generate public interest and involvement in their efforts?

2) What FHWA and FTA implementation strategy would best aid States and MPOs to engage the public in transportation planning, project-development, and decision-making?

3) What is the best approach to improve public involvement for underserved communities?

B. Equity, Environmental Justice and Title VI Requirements

In recent years there has been increased attention and focus on ensuring equity, environmental justice, and Title VI compliance in the delivery of government programs. This was highlighted in February, 1994 when President Clinton signed Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations". The Executive Order requires each Federal agency to "make environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations". The Executive Order reinforces Title VI of the Civil Rights Act of 1964 prohibiting discriminatory practices in programs receiving Federal funds. In addition, U.S. DOT and FHWA have each issued similar orders.

Summary of Outreach Process Comments: Three sets of concerns on equity, environmental justice and Title VI were raised during the outreach process: 1) concerns relating to the process for engaging culturally diverse groups in transportation planning and decision making; 2) issues related to identification and mitigation of adverse impacts; and, 3) issues related to equitable distribution of resources resulting from transportation decisions.

With respect to shortcomings in the process to involve diverse groups, the following summarize what stakeholders said: 1) there is a need for greater stakeholder participation and public involvement in

transportation decision-making; 2) strategies are needed to identify culturally diverse groups and to facilitate their involvement in transportation decisions that affect them; 3) such strategies should be implemented in collaboration with environmental justice and other community-based groups which can assist in their design and implementation; and, 4) funds should be made available to support community-based groups that assist transportation agencies implement improved outreach processes.

On issues relating to the identification and mitigation of adverse impacts, stakeholders said that: 1) success stories or case studies of model environmental justice efforts should be compiled and distributed; 2) better tools are needed in order to conduct assessments of the interactions between transportation, land use and economic disinvestment; and, 3) interagency cooperation in transportation planning needs to be promoted in order to achieve sustainable communities.

With respect to the issue of equitable distribution of transportation resources, we heard the following: 1) the TIP and Plan should prepare a spatial display of the proposed transportation investments by geographic unit (census tract, neighborhood, and council district); performance measures to assess equity impacts should be developed; 2) performance measures to assess equity impacts should be developed; 3) minority and low-income communities want an equitable share of transportation benefits; and, 4) planning certifications should not occur unless there has been a public involvement process that provides for underserved communities and an equitable distribution of resources.

FHWA/FTA welcome suggestions on how to ensure consistent treatment of equity and environmental justice issues in planning and NEPA-related activities. Specific examples of how to effectively ensure that transportation agencies incorporate these considerations on a continuous basis in all planning and project development work would also be helpful.

Alternative Approaches to Implementation - Option #1: As part of the planning guidance and/or regulations one approach would explicitly cite the principles of equity in the distribution of transportation resources and the tenets of the Executive Order on Environmental Justice. For example, the revised public involvement processes would reiterate that public involvement should be directed at the widest possible population, including non-English speaking and persons traditionally underserved by the transportation system with special efforts made for minority and low-income populations. In addition, this approach would promote consideration during the planning process of issues that have a direct linkage to equity, environmental justice and Title VI- Civil Rights issues.

Option #2: As part of potential revisions to the NEPA regulations and/or associated guidance, language could be incorporated which is specific to the equity and environmental justice concerns in several areas. Language could be developed to emphasize that in the consideration of alternative transportation investments, alternatives should be designed to serve the broadest population reasonable, including low-income and disabled people, through the incorporation of multi-modal elements (pedestrian, bicycle, transit and highway services) wherever feasible and possible.

C. Elimination of Major Investment Study as a Separate Requirement

TEA-21 eliminates the major investment study (MIS) as a separate requirement as set forth in the

planning regulations and calls for integration of the requirement into the planning and NEPA analyses, as appropriate. Over the course of the past several years instances were cited where major investment studies were said to duplicate NEPA requirements, were time consuming and costly, and importantly, that results were not usefully integrated into the project development activities under NEPA.

Summary of Outreach Process Comments: The elimination of the separate MIS requirement and the streamlining of the NEPA process (see below) were the subject of considerable comment during the outreach process. Substantial support was expressed for integrating the MIS and NEPA processes and for improvements in both the NEPA and planning processes. Similarly, strong sentiment was expressed that streamlining does not mean cutting corners, circumventing or otherwise diminishing the importance of the NEPA and other environmental requirements. There were a wide range of comments and suggestions on how to integrate the MIS requirements with the planning and NEPA processes. One approach called for flexible guidance combined with strong, focused and targeted oversight. These stakeholders urged the implementation of the TEA-21 MIS provision through guidance where possible and the issuance of regulations only where statutorily required. Further, stakeholders requested that implementing guidance and/or regulation be limited to addressing specific, statutory provisions and that any temptation to add new requirements be resisted.

Another group of stakeholders made the case for the development of strong regulatory language to require the integration of the previous MIS requirement into the NEPA process be included in both updated planning and NEPA regulations. These stakeholders felt that explicit direction pursuant to Congressional intent is needed and that clarity in articulating and implementing the integration of detailed subregional analysis into planning and NEPA processes would be best achieved through regulation. These stakeholders made the case for a substantially enhanced planning process where project purpose and need and comprehensive analyses of alternative investments be conducted as part of planning but within the more formal NEPA process. They also argued that the analysis of cumulative and indirect impacts of transportation investments could and should be greatly improved and that analysis of induced travel, latent demand and various land use implications of investments be rigorously pursued and explicitly defined as part of both the planning and NEPA regulations.

Alternative Approaches to Implementation - The following options are built around strengthening the linkage between systems planning and project development. They would facilitate broader consideration of transportation system development rather than piecemeal development of projects. Systemic grounding of project development could be achieved by: 1) strengthening the consideration of environmental goals and other broad goals in the planning process; 2) encouraging better subregional planning for complex problems; and, 3) giving greater standing to previously conducted planning analyses at the project development stage. Within this framework several options exist for establishing the key linkages.

Option #1: This option would: 1) define the role, function and scope of subregional planning analyses, 2) stress the desirability of determining purpose and need for improvements in the planning process based on consideration of environmental and other non-transportation goals, 3) rely on interagency cooperation in conducting planning analyses (e.g. including Federal and State resource and permitting agencies from the outset), 4) recognize and rely on public involvement processes, and, 5) produce

appropriate documentation of decisions made during planning analyses.

This approach would be optional at the planning stage and the Federal agencies would work with States, MPOs, and transit agencies to promote the adoption and execution of approaches to improve planning. Informational materials, documentation of best practices and technical assistance would be provided to stakeholders to facilitate their planning efforts.

Option #2: Another approach would be to require that transportation plans provide a statement of purpose and need for any proposed substantial transportation investment. This statement would be included in the transportation plan for metropolitan areas prior to initiation of the NEPA process. A consideration of a range of reasonable alternatives during the NEPA process would be accomplished with an alternative chosen based upon costs, impacts, and effectiveness in satisfying the stated purpose and need. If the analysis and review of the transportation problem achieves consensus on a narrowly defined purpose and need that essentially dictates a modal response, then alternatives considered during NEPA could be correspondingly narrow focusing on location and design options. If, on the other hand, the planning process is not conducted and documented at a sufficiently robust level, then scoping may require further analysis prior to reaching consensus on which alternatives to study during the NEPA process.

Option #3: This option would entail initiation of the NEPA process early on, during planning, and would include conducting all planning analysis, development of purpose and need, development and analysis of all reasonable alternatives and all other requirements under the auspices of a formal NEPA process. In the absence of a proposed action, an environmental assessment would be conducted, at a planning level of analysis, to review the chosen range of alternative actions for their impacts. If none of the alternatives had significant impacts the remainder of the review would focus on assessing potential design and location impacts of the alternatives. A FONSI or an EIS could emerge based on the impacts identified.

Option #4: This option would rely on the MPO, the State DOT, and the transit agency(ies) to work out a well-defined, mutually acceptable approach to subregional planning and project development in a metropolitan area. The written agreement among these agencies would clearly define roles, allocate resources, and establish procedures for subregional planning and project development that are consistent with Federal policies on public involvement, environmental stewardship, and numerous others. This option would provide maximum flexibility in conforming Federal procedures to State and local requirements and processes. It would also present the greatest challenges in articulating the principles to be followed and in ensuring accountability.

In all of the above options, the intent is to faithfully implement the TEA-21 provision that exempts plans and programs from mandatory consideration under NEPA. MPOs would not be required to conduct NEPA analyses on plans. However, they could more effectively utilize the analyses conducted during planning activities to facilitate compliance with NEPA requirements at a project level. If a planning process chose to conduct a NEPA analysis on a plan, this would be a permissible, voluntary decision.

- 1) Should a State DOT or transit agency be able to advance a project, on which there has been no

MPO planning activity, through project development to the point of final approval without earlier mandatory consultation with the MPO? Project sponsors might benefit from MPO consultation which could result in reduced delays and costs and an improved system context for project development. Should there be a requirement for early MPO consultation or endorsement? What would be the best approach to enhance the linkage between planning and project development in this regard?

- 2) Which of these approaches would best respond to Congressional intent while eliminating the factors that generated cost, redundancy, and duplication of effort?
- 3) A key decision for an MIS effort was whether a problem was “major” and, hence, warranted such a study. Is some sense of scale (complexity of issues, costs of alternatives, etc.) helpful in determining when the planning process would be assisted by an enhanced analytical effort?
- 4) Should there be a requirement that the formal statement of “Purpose and Need” for a project be adopted, concurred in, or in some way officially accepted by the MPO prior to the initiation of the project development process that addresses that purpose and need?
- 5) Are other options possible? If so what are they?

D. Cumulative and Indirect Effects

The Council on Environmental Quality (CEQ) placed renewed emphasis on the evaluation of cumulative and indirect effects of Federal actions with the publication of its 1997 guidance on this subject. Some examples of these effects in the transportation arena include the water quality impact of numerous losses of very small wetland areas, the community disruption of secondary development associated with a transportation improvement, the flooding impact of the loss of absorbing vegetation and permeable surface area associated with multiple transportation improvements and secondary development, and wildlife habitat fragmentation.

Alternative Approaches to Implementation: Cumulative and indirect effects are most conducive to consideration and evaluation at a regional or large subregional scale rather than on a project-by-project basis. In metropolitan areas, the former MIS requirement provided an opportunity for appropriate consideration of such effects across a subregional area where major, multiple transportation actions might be needed. With the elimination of the separate MIS requirement, the most logical venue for the consideration of such effects may be in the systems planning process that supports the development of the metropolitan or statewide transportation plan. Among the seven planning factors that must be considered are the protection and enhancement of the environment and the improvement of the quality of life, factors that encompass cumulative and indirect effects.

Option #1: One approach to implementation would require an appropriate evaluation of these effects in a regional or subregional analysis, thus obviating the need for repetitious, project-by-project review. Such an approach might also provide an opportunity for more effective and efficient mitigation of cumulative impacts and the enhancement of adversely affected resources. For example, plans for

wetlands banking, for participation in watershed/flood plain management activities, or for a role in the preservation of open space or farmland might be developed in response to the planning-level analysis of cumulative impacts of multiple proposed transportation actions. Certain transportation projects such as those funded with Transportation Enhancement funds, (e.g. the provision of bicycle or pedestrian facilities) might be considered as positively affecting the community or environment in ways other than obvious mobility benefits. A planning-level consideration of cumulative and indirect effects that allows credit to be taken for enhancement projects might encourage the inclusion of such projects to counterbalance the adverse effects of other projects.

Option #2: Another possibility would be an approach whereby the NEPA project reviews would assess whether to rely on the planning analysis of cumulative and indirect effects to satisfy the CEQ requirement for such consideration. In the absence of a robust planning-level review of these impacts, the project-by-project review as part of the each NEPA evaluation would be needed to satisfy CEQ.

IV. NEPA Issues

A. Introduction

FHWA and FTA are considering the need to respond to a number of issues in the NEPA area, some of which relate closely to those just discussed above as cross-cutting issues. Clearly the agencies have a responsibility to implement the NEPA related provisions of TEA-21 in an appropriate manner. Most prominent among these provisions is Section 1309, Environmental Streamlining, which sets forth a coordinated interagency process for advancing major highway and transit projects. Section B below outlines some options for addressing new environmental streamlining responsibilities.

TEA-21 also contains references to NEPA in a number of other provisions. Because differing interpretations of the legislative meaning of each provision is possible, FHWA and FTA are evaluating an appropriate regulatory and/or guidance response to each. Section C presents options for addressing these NEPA related provisions.

In addition to changes mandated by TEA-21 provisions, FHWA and FTA see the need to continuously improve their administration of NEPA. In the 12 years since the FHWA and FTA NEPA regulation was issued (23 CFR771, August 28, 1987), the nature of the highway and transit programs has evolved as has understanding of effective environmental analysis, prevention and integration of adverse environmental impacts, agency and public coordination, and project development practices. FHWA and FTA are evaluating the need to modify the NEPA regulation and to issue complementary guidance and best practices. Section D presents options for doing this.

B. Environmental Streamlining

Section 1309 of TEA-21 establishes a process intended to coordinate Federal agency involvement in major highway and transit projects with the goals of identifying decision points and potential conflicts

as early as possible, integrating the NEPA process as early as possible, encouraging the full and early participation of all relevant agencies, and establishing coordinated time schedules for agencies to act on a project. The environmental streamlining provision: 1) provides the U.S. DOT the option of entering into memoranda of understanding(MOUs) or memoranda of agreements(MOAs) with Federal or State agencies; 2) establishes a dispute resolution process; 3) allows States the option of including their environmental reviews in the coordinated environmental review process; and 4) authorizes the U.S. DOT to approve State DOT requests to reimburse Federal agencies for expenses associated with meeting expedited time frames.

Summary of Outreach Process Comments: Most parties understood the environmental streamlining provisions to be a call for more timely review and decision making, but without any reduction of substantive environmental protections. Views differed considerably on how binding these provisions should be on other Federal agencies: some read the provision as directing other agencies to participate in the coordinated review process, while others interpreted it as providing exceptions which in effect gave environmental agencies the option to participate or not, at their discretion. Most recognized the need for close coordination at the national level between the U.S. DOT and other agencies so that the field units of all agencies operate from a common understanding of the law. National MOUs were generally viewed as appropriate in this regard. Multi-state, State, or project-level agreements were also viewed as a possibility. Some parties voiced concern about the operational difficulty of establishing hard and fast time frames for coordination, while others viewed this as a central benefit of the environmental streamlining provision. Dispute resolution processes were viewed by some as being essential, while others see them as so cumbersome so as to defeat their streamlining purpose. Finally, some parties recommended that the U.S. DOT interpret the Federal agency reimbursement provision broadly to give States essentially unlimited flexibility, while others argued for a narrow application of this authority to projects requiring expedited reviews.

In each of the following areas, options and approaches to address issues raised through the environmental streamlining provisions are briefly discussed. As with the other concepts and options presented in this document, suggestions and input on approaches are welcome.

1. Memoranda of Understanding/Memoranda of Agreement

FHWA and FTA have discussed the Environmental Streamlining provisions with representatives of other Federal agencies at the headquarters and field levels to begin building a common understanding of the provision and a coordinated implementation strategy. High level contact between cabinet level officials is a strong possibility, with either bilateral or multi-lateral MOUs/MOAs resulting from this contact. FHWA and FTA are also evaluating the desirability of developing model MOUs/MOAs for implementation at a sub-national level. Another option would be to disseminate agreements reached in one area with other areas that are contemplating the development of similar agreements. FHWA and FTA are also evaluating their experience in developing and using NEPA/404 merger agreements for insights into how best to use interagency agreements in implementing environmental streamlining.

2. Enhanced Scoping and Lead Agency Role

Experience has shown that many of the conflicts which delay Federal approvals of highway and transit projects are somewhat predictable and might be better anticipated and managed by using the scoping process as an early warning system. In addition, the development of interest-based negotiating and collaborative problem solving skills can help to creatively craft implementable solutions. One option to implementation might include an approach to complex projects where agencies agree upon review schedules only after sufficient information on issues has emerged to allow them to gauge the required level of effort for their respective agency. Another approach might make the scoping process, (as part of an aggressive, high visibility project management role by FHWA or FTA as the lead Federal agency), a mechanism for identifying the issues, and agreeing on roles, time frames, and methodologies associated with advancing the project. The evaluation of regulatory language and/or guidance is underway to identify ways to enhance scoping efforts and the overall effectiveness of the FHWA/FTA as lead agency.

3. Pilot Efforts

One effective mechanism for testing and evaluating change is to engage in pilot efforts. In the environmental streamlining area there are several options for types of pilot efforts. One type of possible pilot effort, “NEPA Reinvention Pilots” might include partnerships between FHWA and/or FTA and State DOTs, MPOs, and/or transit agencies to evaluate and enhance how NEPA is factored into transportation decision making. The focus would normally be on the project development process and how State and local project location and design decisions can be better integrated with Federal NEPA responsibilities. Nevertheless, an alternative approach might allow, at the non-Federal partners’ option, the NEPA Reinvention pilots to encompass enhanced consideration of environmental factors in planning, with the goal of minimizing reevaluation of planning decisions during subsequent project development phases.

Another option for pilot efforts might be environmental streamlining pilot projects. These might consist of partnerships between FHWA and/or FTA, non-Federal transportation partners, and environmental resource and permitting agencies to test environmental streamlining concepts on specific projects. The goal of these projects would be to assure the full engagement of all relevant agencies at the appropriate points in the process and to test and evaluate different approaches for arriving at environmentally responsible transportation decisions in the most timely fashion possible. FHWA and FTA will be assessing options regarding the potential number and type of pilot efforts and possible criteria for selection in the coming months.

4. Reimbursement of Federal Agency Expenses

The inability of environmental resource and permitting agencies to fully engage in the transportation decision making process at the most appropriate point has historically been a major obstacle to achieving the ideal of a fully integrated environmental review process. The agency reimbursement language in the environmental streamlining provisions of TEA-21 offers an opportunity to partially overcome this obstacle. TEA-21 includes specific conditions relating to agency reimbursement: expenses to be reimbursed are limited to those additional expenses needed to meet expedited time schedules. In addition, other statutory authorities exist for agency reimbursement and FHWA and FTA are exploring the full range of options for reimbursing agencies under any of the appropriate authorities. Furthermore,

approaches to developing collaborative efforts with other Federal agencies are being explored in order to develop model reimbursement agreements and to facilitate the implementation of such agreements by Federal agency field staff.

C. Other NEPA Related Provisions of TEA-21

As described below, TEA-21 contained a number of separate provisions that relate to NEPA. The TEA-21 outreach process revealed differing interpretations of some provisions. In the interest of clarity, FHWA and FTA are considering options and possible implementation approaches in each area.

1. Contracting for Engineering and Design Services

Section 1205 allows a State to procure under a single contract the services of a consultant to prepare environmental documents for a project as well as subsequent final engineering and design work on the project if the State conducts a review assessing the objectivity of the environmental documentation.

Summary of Outreach Process Comments: Some parties were concerned about the potential for conflict of interest – that a consultant doing environmental (NEPA) work would be motivated to provide information that would be biased toward proceeding with the follow-on design work. They therefore argued for a well documented analysis by the State of the objectivity of the environmental documentation. Others noted that such a review of objectivity is inherent in a well managed and publicly open NEPA process, and that separate documentation was unnecessary.

Experience has shown that, although on many projects consultants do prepare the bulk of the detailed analyses and NEPA documentation, this process involves close oversight by the State or local public agency and by the lead Federal agency. It is the ongoing responsibility of the FHWA and FTA to ensure that all consultant work reflected in the NEPA process and documentation meets basic standards of objectivity and professionalism. One option might be to retain the current approach to oversight and not require new, separate documentation as evidence of the objectivity of the consultants' work. Another approach would be to add regulatory language requiring separate documentation be prepared by States or local public agencies in order to ensure the objectivity of consultants' work.

2. Design-Build Contracting

Section 1307 of TEA-21 permits a State or local transportation agency to award a design-build contract during project development provided that final design shall not commence before the NEPA process has been completed.

Summary of Outreach Process Comments: Several comments suggested that design-build should not be used on complex and controversial projects because public agencies needed to be in a position to modify the proposal at all phases of project development to fully address environmental concerns. Others suggested that design-build procurements should not be initiated until after the NEPA process had been concluded, at which point the specifics of the location and design decision would be known. Another point of view which was presented argued that having a design-builder on board at the earliest

possible time was actually environmentally beneficial, since they could contribute valuable input in a timely way, to arrive at implementable and cost effective recommendations.

FHWA and FTA are concerned about design-build contracts for federal-aid projects being let before the NEPA process has been completed. To do so could give the appearance that the State or local transportation agency is fully committed to a single course of action and that the NEPA process is simply a clearance exercise and not a true decision making process. There may; however, be some situations in which design-build procurements can be structured to allow for the design-builders to work on any alternative emerging from the NEPA process. FHWA and FTA recognize that the emerging interest in design-build contracting may warrant specific regulatory language or guidance addressing the relationship between design-build procurement and NEPA and will be developing options and possible approaches to implementing this TEA-21 provision.

3. Real Property Acquisition and Corridor Preservation

Section 1301 of TEA-21 allows the value of land acquired by a State or local government without Federal assistance to be credited to the State share of a federally-assisted project which uses that land, provided that several conditions are met. These conditions include: that the land acquisition will not influence the environmental assessment of the project, including the need to construct the project, the consideration of alternatives, and the selection of a specific location.

Summary of Outreach Process Comments: Some parties expressed the view that purchase of land is inherently a commitment to a particular project location and that it therefore would invariably influence the assessment of the project under NEPA. This might be mitigated through purchase of land on multiple alignments or purchase of options rather than outright acquisition. Others view land acquisition as environmentally neutral, in that unused land can be disposed of, often at a profit. Some readers of TEA-21 interpreted this section to also allow for acquisition of entire transportation corridors in advance of NEPA approval using Federal-aid funds. Several commenters suggested that this provision should only apply to land purchased before a State or local government contemplates using Federal-aid funds for construction, while others felt that the timing of the land acquisition should be immaterial.

FHWA is considering under an NPRM covering “Right-of-Way Program Administration” published for comment in the December 24, 1998 Federal Register, an “early acquisition” policy to accommodate the acquisition of land (including “at risk” activities) by State or local agencies that may be deemed necessary while NEPA considerations are being concluded. Interested parties should refer to the December 24, 1998 NPRM.

D. Revisions to the 1987 NEPA Regulation and Associated Guidance

Despite far ranging consideration of environmental issues in the legislative process, TEA-21 is not a comprehensive approach to NEPA issues. While the environmental streamlining provision and the other NEPA related provisions touch on a number of NEPA questions, there are many more which FHWA

and FTA have encountered during their management of the program since the NEPA regulation was last issued in 1987. The U.S. DOT has progressed considerably in its treatment of the environment since 1987 and has recently adopted as one of its five strategic goals the protection and enhancement of communities and the natural environment. Translating this strategic direction into day-to-day operations requires that appropriate changes be made to regulations and operating guidance. Possible approaches and options under consideration are outlined below.

Summary of Outreach Process Comments: While U.S. DOT focused our outreach activities on implementation of TEA-21 provisions, comments were also solicited on how to improve management of the program in general, including areas that were not changed in TEA-21. In the NEPA area, some responses emphasized the need for greater flexibility, including the suggestion that regulatory language be pared back and permissive guidance expanded. In particular, some parties suggested that FHWA and FTA revise the NEPA regulation to remove duplication of items adequately covered in the CEQ regulation. Several suggestions related to establishing minimum performance expectations in the NEPA regulation, rather than procedural requirements. A number of parties suggested that issuance of regulations was too slow a process to respond to real world needs for adaptation of approach.

On the other hand, other commenters considered it more important to have clear process requirements which were known to all stakeholders, not just transportation agencies. They suggested that the notice and comment process of Rulemaking was a valuable means for obtaining public input prior to finalization and that codification in Federal regulation made the resulting product accessible to widest possible audience. Finally they suggested that given the litigation exposure of NEPA related approvals, FHWA and FTA would minimize their litigation risk by having important issues fully covered in regulation.

Some commenters suggested that FHWA and FTA need to better emphasize the core environmental values of Section 101 of NEPA rather than focusing strictly on the procedural requirements of Section 102 of NEPA. They suggested that fewer conflicts would result if transportation agencies gave the same priority in decision making to the environmental implications of a transportation proposal as they did to engineering and cost considerations.

Several parties suggested that the FHWA and FTA approach to NEPA needed to offer an enhanced approach to the consideration of alternatives, so that non-traditional solutions such as demand and system management approaches and partial build solutions could receive more serious consideration. They suggested that this would require a corresponding rethinking of how the agencies approach the statement of purpose and need.

Other commenters underscored the need for more visible and objective management of the NEPA process by FHWA and FTA staff. A major concern expressed was that FHWA and FTA officials tended to be advocates of State and local transportation proposals, rather than unbiased stewards of the variety of Federal interests embodied in Federal transportation and environmental law. This was perceived as contributing to a loss of credibility in the NEPA process, with attendant conflict resulting. Others believed that weak FHWA and FTA management of the NEPA process as lead Federal agencies caused decisions to be delayed pending protracted resolution of interagency issues.

A number of parties expressed concern that the public would be excluded from critical decisions if environmental resource and permitting agencies became more involved in the earlier stages of the NEPA process and concurred in certain elements of the project, such as purpose and need and the range of alternatives. They argued for effective public involvement opportunities at all stages of transportation planning and project development.

In addition to the TEA-21 outreach effort, FHWA and FTA have utilized other venues to obtain feedback on how to improve the administration of NEPA. Of principal importance was the NEPA 25th Anniversary Workshop. Participants included a diverse group of governmental and non-governmental individuals representing transportation, community, and natural environmental interests. The resulting blueprint document underscores the need for a fundamentally new approach to NEPA, one that emphasizes strong environmental policy, collaborative problem solving approaches involving all levels of government and the public, and integrated and streamlined coordination and decision making processes.

1. Applicability of the NEPA Regulation to Other DOT Modes

In 1993 the U.S. DOT National Performance Review effort recommended that the NEPA procedures of the various modes be blended into a single process. Efforts to accomplish this were purposely delayed until after passage of the surface transportation reauthorization which became TEA-21. Recent discussions within the U.S. DOT are pointing toward a dual effort, one of which would cover the entire department, the other of which would cover just FHWA, FTA, and potentially the high speed rail program of the Federal Railroad Administration (FRA).

The first approach would update the U.S. DOT Order on NEPA to reflect a department-wide statement of environmental policy and to remove barriers to collaboration between U.S. DOT modes on NEPA issues. One option would be to provide authority for one U.S. DOT agency to use the procedures of another U.S. DOT agency or to act as agent for another U.S. DOT agency when a situation warrants this approach.

A second approach is to explore the expansion of the FHWA and FTA NEPA regulation to include high speed rail. While FRA has principal program authority for high speed rail, FRA and FHWA often serve as joint lead agencies on high speed rail corridors, with FHWA field staff often providing day-to-day oversight of Federal NEPA responsibilities. FHWA also must give approvals relating to crossings of Interstate highways or use of Interstate rights-of-way by high speed rail lines. At their terminals, high speed rail often must interconnect with urban mass transit systems. Given the intermodal partnership between FRA, FHWA, and FTA on high speed rail proposals, there may be advantages to broadening the applicability of the FHWA and FTA NEPA regulations and associated guidance to also include FRA's high speed rail responsibilities.

2. Statement of Environmental Policy

FHWA and FTA recognize the merit of clarifying the Federal responsibility inherent in the granting of NEPA approvals. One option would be for the agencies to communicate a clear message that FHWA

and FTA view NEPA responsibilities as being more than just about informed decision making and that they include an affirmative duty to only approve transportation proposals which represent responsible stewardship of community and natural environmental resources. As part of such an articulation of environmental policy under this approach, FHWA and FTA could expand upon earlier statements concerning the use of Federal funds for mitigation and enhancement measures.

3. Lead Agency Responsibilities

FHWA and FTA are considering approaches to environmental stewardship that would more strongly communicate to agency staff and to its partners that they have a collective responsibility to use the NEPA process as more than a way of granting FHWA and FTA approvals. Such a communication could indicate that the NEPA process must also be the mechanism for addressing issues associated with obtaining permits, approvals, statutorily required reviews, and land transfers from other Federal agencies. As such, FHWA and FTA could articulate their obligation to meet the reasonable needs of those agencies for information and analysis in a form and at a time which allows those partner agencies to meet their statutory responsibilities.

One option might be to clarify the independent nature of the Federal NEPA decision, especially when State and local governments or private entities engage in “at risk” activities which create an appearance of commitment of the Federal government to a particular course of action. As principal steward of the NEPA process, the lead Federal agency has a responsibility to ensure that the nature of commitments are fully disclosed.

In a related vein, another possible approach would reaffirm that the FHWA/FTA role, as lead Federal agency (FHWA or FTA), will be to manage the process to ensure that Federal NEPA decisions pay appropriate deference to State and local decisions made in good faith without intent of forcing a particular Federal decision. The degree of deference might vary, with greater deference paid to State and local decisions which considered a broad range of factors and which were made with the advice of appropriate Federal agencies.

4. Scoping and Early Coordination

FHWA and FTA experience has revealed that scoping and early coordination efforts can set the tone, positive or negative, for all subsequent project activities. It is therefore critically important that they be carried out as effectively as possible. Approaches are being explored which would establish enhanced performance expectations for scoping and early coordination efforts and FHWA and FTA invite suggestions on how they might appropriately scale such performance expectations to the different classes of action (EIS, EA, or CE).

5. Purpose and Need and Evaluation of Alternatives

As discussed in the previous section under MIS integration, the establishment of purpose and need and the broad scale evaluation of alternatives is often most appropriately accomplished during the planning process. Nevertheless, at the project level there is a need to either build on the results of the regional

or sub-regional planning process or to address issues of purpose and need and evaluation of alternatives from scratch if the planning process has not addressed them.

A continuing challenge regarding purpose and need is how to frame the purpose and need so that they are neither too narrow nor too broad. If too narrowly conceived, purpose and need point to an overly small set of possible solutions; too broadly constructed, they point to an unmanageably large set of alternatives. Options to provide clearer direction regarding what constitutes an acceptable statement of purpose and need are being explored and FHWA and FTA invite specific suggestions on this issue.

A particularly troubling issue relating to evaluation of alternatives is what to do with alternatives which do not fully meet purpose and need, but which partially satisfy purpose and need at substantially lower cost, time of implementation, and impact. Current NEPA practice is to eliminate from further consideration as “unreasonable” any alternative which does not fully meet purpose and need. One approach would be to establish a policy by which such an alternative could be selected through the NEPA process based on a finding that the cost, time, and impact savings justify accepting lower than desired levels of transportation service.

6. Categorical Exclusions

Additions to the list of projects which may be eligible for categorical exclusions are possible options and are currently being evaluated. Possible additions might include transportation enhancement projects, certain bicycle and pedestrian projects, especially those oriented around improving safety for bicyclists and pedestrians, wetland and upland habitat bank projects, and certain projects eligible for Congestion Mitigation and Air Quality Improvement Program funding including transportation demand management projects such as vanpool programs, bicycle stations, and services at existing transit or transportation centers designed to reduce single-occupant vehicle travel. In addition, FHWA and FTA are exploring the need for additional guidance on when a group of different, but related, categorically excluded actions may need to be evaluated as a whole if they have a net effect that may warrant further environmental analysis (e.g. ITS projects throughout a corridor).

7. Environmental Assessments and Environmental Impact Statements

FHWA and FTA are evaluating the desirability of incorporating by reference relevant sections of the CEQ regulation in lieu of the procedural requirements currently in the FHWA and FTA NEPA regulation. Amplifying specific direction could be addressed in accompanying guidance.

8. Limitations on Actions

One option might be to clarify that the FHWA and FTA cannot prevent State and local governments and private entities from taking actions that are “at risk” such as final design or land acquisition prior to NEPA approval. Further, it may help to clarify that FHWA and FTA will not finance such “at risk” actions and will not base their decisions on the actions taken by others. Another option would be to maintain the status quo. For projects that will be federally funded, the present regulation prohibits final design and land acquisition (with certain limited exceptions) prior to the completion of the NEPA

process. The enforcement of this prohibition has been confounded by the fact that specific funding sources, especially for smaller projects, are often not identified until late in project development. Maintaining the current prohibition could help to ensure the integrity of the NEPA process which mandates the consideration of impacts and alternatives prior to commitment of a particular course of action.

9. Programmatic approaches

An approach may be needed to explicitly recognize the appropriateness of programmatic approaches to NEPA compliance for categorical exclusions for limited types of projects. Programmatic approaches have proved to be efficient ways of meeting the NEPA requirements in uncomplicated and non-controversial situations. If such an approach were advanced, programmatic approaches to meeting the NEPA requirements which would not directly involve project level Federal approvals would be subject to periodic process reviews to ensure that they are being properly applied. This would enable the Federal agencies to focus limited resources on more problematic project-level decisions and to maintain a quality control role for projects with beneficial or de minimis environmental impacts.

10. Section 4(f)

FHWA and FTA are evaluating the option of separating the NEPA regulation from the Section 4(f) requirements, which are oriented toward preservation of parklands, public park and recreation lands, wildlife and waterfowl refugees, and historic sites. Given the scope of Section 4(f) issues, and in recognition of the need to issue revisions to the NEPA regulation in an expedited manner, a separate Rulemaking on Section 4(f) rule may be desirable.

11. Transportation Conformity

There may be a need to explain and clarify the point during the NEPA process at which a conformity finding on the plan and TIP must be made before proceeding with NEPA approvals. Previously FHWA maintained that conformity must be made at the time that preliminary engineering is programmed for NEPA development. Subsequently, proposed guidance suggested that conformity should be demonstrated before the final NEPA approval (i.e. approval of CE, FONSI, or FEIS). Such a clarification could ensure that conformity is demonstrated for the most likely project scenario before the NEPA process is completed for such project.